



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2005

Ms. Ruth Soucy
Manager and Legal Counsel
Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2005-04660

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225007.

The Comptroller of Public Accounts (the "comptroller") received a request for any documents related to closed tax cases from January 1, 1991 to December 31, 2004 that involved tax refunds or tax liability decisions concerning a named entity. You state that you will release most of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101. You also state that Fisher Controls International, L.L.C. ("Fisher") may have proprietary interest in some of the information. Pursuant to section 552.305 of the Government Code, you notified Fisher of the request for information and of its right to submit arguments explaining why the information concerning it should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

The comptroller states that the requestor asked for administrative hearing decisions. You further explain that the submitted attachments are incorporated by reference into the submitted decisions. The comptroller then states: "We defer to you as to whether the

attachments are responsive as well.” However, the comptroller and her designated public information officer are responsible for responding to an open records request and determining which information is responsive to a request for information. *See* Gov’t Code §§ 552.201-.205. Since the comptroller has submitted the attachments, we will address the comptroller’s arguments as to these documents.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by statute. You assert that the submitted warrant number is confidential under section 404.058 of the Government Code. Section 404.058 is applicable to information relating to outstanding state warrants and provides in part:

(b) The warrant number of an outstanding warrant is excepted from the requirements of Section 552.021 [of the Government Code] if the warrant is issued by the comptroller.

(c) A person who issues a warrant under Section 403.060(a) [of the Government Code] may disclose the warrant number of the warrant to a person other than the comptroller only if the comptroller has

(1) informed the person that the warrant is not an outstanding warrant; or

(2) authorized or required the disclosure.

Gov’t Code § 404.058(b)-(c); *see also id.* § 404.058(d)(1)-(2) (defining “outstanding warrant” and “warrant number”). You inform us that the submitted warrant number is of a warrant that was outstanding when the comptroller received this request for information. You do not inform us that this warrant number is subject to disclosure under section 404.058(c). We therefore conclude that the outstanding warrant number that you have provided must be withheld under section 552.101 of the Government Code in conjunction with section 404.058(b) of the Government Code.

Next, we address the comptroller’s and Fisher’s arguments with regard to the submitted administrative hearings decisions and their attachments. The public availability of this information is governed by section 552.025 of the Act, which provides as follows:

(a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.

(b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.

(c) Subchapter C [of chapter 552 of the Government Code] does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

Gov't Code § 552.025. Thus, section 552.025 provides that a governmental body with taxing authority that issues rulings encompassed by section 552.025 shall make such rulings available to the public and that subchapter C of the Act, which contains all of the Act's exceptions to required public disclosure, does not authorize withholding such rulings from the public. *See id.* § 552.025(b)-(c). The comptroller is a governmental body with taxing authority. *See* Tax Code tit. 2.

In this instance, the comptroller and Fisher contend that the submitted administrative hearings decisions and their attachments contain information that is excepted from public disclosure under section 552.101 in conjunction with certain provisions of the Tax Code. We note, however, that section 552.101 is one of the exceptions found in subchapter C of the Act. Both you and Fisher concede that the submitted administrative hearings decisions are decisions issued by the comptroller concerning a tax matter. Thus, the administrative hearings decisions and their attachments are within the scope of section 552.025(c). Under section 552.025(c), the exceptions to public disclosure found in subchapter C are not applicable to information encompassed by section 552.025(a) that must be made available to the public under section 552.025(b). Therefore, the comptroller may not withhold information contained in the administrative hearings decisions and their attachments under section 552.101.

The comptroller also asks whether, under certain language found in section 552.025(b), the administrative hearings decisions and their attachments would be subject to section 552.022 of the Government Code. Section 552.025(b) provides that "[o]n request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, *subject to the provisions of this chapter.*" Gov't Code § 552.025(b) (emphasis added). You point out that "the provisions of [chapter 552 of the Government Code]" include section 552.022. You note that under this section, "final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases" are made expressly public unless they are expressly confidential under other law. Gov't Code § 552.022(a)(12).

You contend that if the submitted administrative hearings decisions and their attachments are subject to section 552.022(a)(12), then the comptroller may withhold information contained in the decisions and their attachments that is expressly confidential under other

law. Even assuming, however, that section 552.022(a)(12) is applicable to the information at issue, we believe that the public availability of this particular information is governed by section 552.025. See *Holmes v. Morales*, 924 S.W.2d 920, 923 (1996) (when two sections of act apply, specific section controls over general provision); *Wallace v. Tex. Dep't of Crim. Justice*, 36 S.W.3d 607, 611 (Tex. App.—Houston [1st Dist.] 2000, review denied) (assuming that specific deadline for filing grievance claim conflicted with general two-year limitation period for tort claims, specific provision controlled). Thus, the administrative hearings decisions and their attachments are not subject to section 552.022 of the Government Code and must be released.

In summary, the comptroller must withhold the outstanding warrant number under section 552.101 of the Government Code in conjunction with section 404.058 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

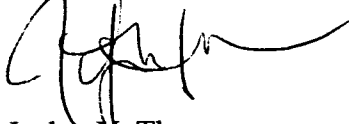
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaclyn N. Thompson', with a stylized flourish at the end.

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/sdk

Ref: ID# 225007

Enc. Submitted documents

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